

Application of City of Winifred
Water Reservation No. 71998-41S

II. FINDINGS OF FACT

A. FINDINGS ON THE QUALIFICATION OF THE CITY OF WINIFRED TO RESERVE WATER (Mont. Code Ann. § 85-2-316(1)(1991); ARM 36.16.107B(1)(a).)

1. The City of Winifred is an incorporated municipality and a subdivision of the State of Montana. (Bd. Exh. 6-A, p. 1; Mont. Code Ann. § 85-2-316(1), ARM 36.16.107B(1)(a).)

2. The City of Winifred has applied for a water reservation of 60 acre-feet/year (af/yr) of water with a maximum diversion rate of .26 cubic feet/second (cfs) to be diverted from a well in the alluvial aquifer of the Judith River for year round use. (Bd. Exh. 6-C, p. 1.)

3. The City of Winifred requested a water reservation to meet existing and future demands by municipal and industrial users if water quality problems continue with the existing city water sources. (Bd. Exh. 6-A, p. 3 and Bd. Exh. 6-C, p. 1.)

B. FINDINGS ON THE PURPOSE OF THE WATER RESERVATION APPLIED FOR BY THE CITY OF WINIFRED (Mont. Code Ann. § 85-2-316(4)(a)(1991); ARM 36.16.107B(1)(b).)

4. The City of Winifred seeks to provide municipal water for future growth in a cost-effective manner. Sound planning requires providing users with an adequate water supply. The term of the water reservation is to year 2025. (Bd. Exh. 6-A, p. 5.)

5. The purpose of the reservation is to provide the water for municipal and industrial uses. (Bd. Exh. 6-A, p. 3.) Municipal and industrial uses are beneficial uses of water in Montana. (Mont. Code Ann. § 85-2-102(2)(a), ARM 36.16.102(3); ARM 36.16.107B(1)(b).)

C. FINDINGS ON THE NEED FOR THE WATER RESERVATION APPLIED FOR BY THE CITY OF WINIFRED (Mont. Code Ann. § 85-2-316(4)(a)(ii)(1991); ARM 36.16.107B(2).)

6. The "Phillips" well field along Dog Creek presently provides up to .20 cfs of low quality water to the City of Winifred. (Bd. Exh. 6-A, p. 27.) The reservation water requested would be delivered from the Judith River alluvial aquifer to the existing municipal system by a new 9.5 mile pipeline. (Bd. Exh. 6-A, p. 6, and Bd. Exh. 6-C, p. 3A.)

7. A reservation is the only means to obtain an early priority date for water that will be needed to meet possible

municipal needs for better quality water. In the future, water may be appropriated by competing agricultural, industrial, and instream users. (Bd. Exh. 40, p. 249; Bd. Exh. 6-A, p. 6.)

8. It is important that the City of Winifred have a water reservation to meet future municipal and industrial water demands in order for the community have a water supply that meets drinking water quality standards. (Bd. Exh. 6-A, pp. 29-32.)

9. Competing water uses may prevent the City of Winifred from obtaining or perfecting a water use permit in the future. Without a reservation, the City of Winifred may have to go through a costly process of buying or condemning existing water rights to meet increasing demands. (Bd. Exh. 40, p. 249.)

D. FINDINGS ON THE AMOUNT OF WATER NEEDED FOR THE WATER RESERVATION APPLIED FOR BY THE CITY OF WINIFRED (Mont. Code Ann. § 85-2-316(4)(a)(iii)(1991); ARM 36.16.107B(3).)

10. The method of determining the amount of water requested for a water reservation by the City of Winifred was based on a forecast of its future population to the year 2025 along with the estimated amount of water used per person. (Bd. Exh. 40, p. 35.) The methodology used by the City of Winifred projected an average annualized (compounded population growth rate) of approximately .42 percent. (Bd. Exh. 40, p. 236.) The 1990 population of Winifred was 150. (Bd. Exh. 40, p. 246.) The City of Winifred's population forecast for the year 2025 was 187 people. (Bd. Exh. 40, p. 236.)

11. The populations recorded in the 1990 census indicate that the City of Winifred continues a long term trend of modest population declines. (Bd. Exh. 6-A, p. 12, and Bd. Exh. 40, p. 236.)

12. The City of Winifred's water system appears to operate at a reasonable efficiency (Bd. Exh. 6-A, p. 22), but has elevated use rates of 310 gallons per person per day (about 25% above typical basin use rates of 250 gallons per person per day). (Bd. Exh. 6-A, p. 21.)

13. Over 60 percent of the system services are metered at present. (Bd. Exh. 6-A, p. 21.) However, the meters are unread, with all users billed on a flat rate schedule. (Bd. Exh. 6-A, p. 21.) These low costs encourage excessive water usage. (Bd. Exh. 6-C, p. 2.) Use of meters could be cost-effective in reducing use toward typical use rates of 250 gallons per person (Bd. Exh. 6-A, p. 21.)

14. The water use efficiencies associated with the municipal uses by the City of Winifred are reasonable. (ARM 36.16.107B(3)(b).)

15. Except for the measure listed above, no other cost-effective measure could be taken within the reservation term to increase the use efficiency by the City of Winifred and lessen the amount of water required for the purpose of the reservation. (ARM 36.16.107B(3)(b).)

E. FINDINGS THAT THE WATER RESERVATION APPLIED FOR BY THE CITY OF WINIFRED IS IN THE PUBLIC INTEREST (Mont. Code Ann. § 85-2-316(4)(a)(iv)(1991); ARM 36.16.107B(4).)

16. Benefits of the City of Winifred's water reservation were calculated on a willingness-to-pay basis. Winifred used a \$1.50 to \$3.00/1,000 gallons value. (Bd. Exh. 6-A, p. 49.) Helena municipal users are currently paying \$2.47/1,000 gallons. (Bd. Exh. 40, p. 253.)

17. The additional water provided by the water reservation will cost approximately \$.96 to \$1.83/1,000 gallons. (Bd. Exh. 6-A, p. 49; Bd. Exh. 6-C, p. 5.)

18. The direct benefits of the City of Winifred's water reservation exceed the direct costs. (ARM 36.16.107B(4)(a).)

19. Indirect benefits of the City of Winifred's reservation may include secondary economic benefits to the community and to the state, and expanding both the property and income tax base from increased population. (Bd. Exh. 6-A, p. 51.)

20. Indirect costs of the reservation may include loss of opportunity for other development and increased administrative costs. While not quantified these costs are minor. (Bd. Exh. 6-A, p. 50.)

21. There is no significant adverse environmental impact associated with the use of the City of Winifred's water reservation. (Bd. Exh. 6-A, pp. 51-52.) The benefits of better quality municipal drinking water were identified as a significant benefit. (Bd. Exh. 6-A, p. 51.) The effects of individual municipal water reservation depletions on water quality have not been quantified (Bd. Exh. 40, pp. 253-254), but should be very small. Any resulting health risks have not been quantified. No other non-quantifiable benefits or costs were identified. (Bd. Exh. 6-A.)

22. Net benefits of granting the City of Winifred's water reservation exceed the net benefits of not granting the water reservation and the project is economically feasible. (ARM 36.16.107B(4)(b); ARM 36.16.102(9).)

23. The City of Winifred identified two alternative sources of water for future development, a deep well to the Eagle Formation, and water treatment. These alternatives would not provide greater net benefits than the water reservation, (Bd. Exh. 6-A, pp. 37-47) and are not reasonable. (ARM 36.16.107B(4)(c).)

24. Failure to reserve water for future municipal and industrial use by the City of Winifred is likely to result in an irretrievable loss of a resource development opportunity. (Bd. Exh. 6-A, p. 52; ARM 36.16.107B(4)(d).)

25. As conditioned, the City of Winifred's water reservation will have no significant adverse impact to public health, welfare, or safety. (ARM 36.16.107B(4)(e).)

F. OTHER FINDINGS RELATING TO BOARD DECISION (Mont. Code Ann. § 85-2-316(3)(B), (4)(a)(iv)(b), (5), (6), and (9)(e)(1991); ARM 36.16.107B(5) through (8).)

26. The water reservation by the City of Winifred will be used wholly within the state and within the Missouri River basin. (Bd. Exh. 6-A, p. 1; ARM 36.16.107B(5) and (6).)

27. The City of Winifred has identified a management plan for the design, development, and administration of its water reservation. (Bd. Exh. 6-A, p. 54.)

28. The City of Winifred is capable of exercising reasonable diligence towards feasibly financing the project and applying reservation water to beneficial use in accordance with the management plan. (ARM 36.16.107B(7).)

29. The priority date of the City of Winifred's water reservation is July 1, 1985. (Mont. Code Ann. § 85-2-331(4).)

30. As conditioned, the City of Winifred's water reservation will not adversely affect any senior water rights. (ARM 36.16.107B(8).)

31. The public interest in protecting domestic and stockwater rights with a priority date on or after July 1, 1985 and perfected prior to the final date of this Order outweighs the values protected by the municipal reservations.

III. CONCLUSIONS OF LAW

1. City of Winifred is a qualified applicant for a water reservation. (Mont. Code Ann. § 85-2-316(1)(1991).)

2. The purpose of the City of Winifred's application is a beneficial use. (Mont. Code Ann. § 85-2-316(4)(a)(i)(1991); ARM 36.16.107B(1)(b).)

3. The need for the City of Winifred has been established. Specifically, the City has established that there is a reasonable likelihood that future in-state competing water uses would consume the water available for the purpose of its reservation. (Mont. Code Ann. § 85-2-316(4)(a)(ii)(1991); ARM 36.16.107B(2).)

4. The methodologies and assumptions used by the City of Winifred are suitable but not accurate under present conditions. (ARM 36.16.107B(3)(a).) An accurate population projection for the City of Winifred is a stable population of between 120 and 180 people. As modified, the City of Winifred has established the amount of water needed to fulfill its reservation. (Mont. Code Ann. § 85-2-316(4)(a)(iii)(1991); ARM 36.16.107B(3).)

5. Based on a weighing and balancing of the evidence, the reservation by the City of Winifred as modified herein is in the public interest. (Mont. Code Ann. § 85-2-316(4)(a)(iv); ARM 36.16.107B(4).)

6. Upper Missouri River water reservations approved by the Board shall have a priority date of July 1, 1985. (Mont. Code Ann. § 85-2-331(4).) The Board may determine the relative priorities of all reservations. (Mont. Code Ann. § 85-2-316(a)(e).)

7. The Board may grant, deny, modify, or condition any reservation applied for. In no case may the Board make a reservation for more than the amount applied for. (Mont. Code Ann. § 85-2-316.)

8. The Board has no authority under the reservation statutes or any other statutes to determine, or alter, any water right that is not a reservation. (Mont. Code Ann. § 85-2-316(14).)

IV. ORDER

1. Subject to all applicable modifications, conditions, and limitations (including but not limited to the conditions applied to consumptive use reservations in Exhibits A and B attached to this Order) the application of the City of Winifred is granted for the following amount and flow of water: .23 cfs and (100 gallons per minute) and 161 af/year.

2. The point of diversion and place of use are from the well set forth in the reservation application City of Winifred and by reference are made a part of this Order.

3. The reservation is adopted subject to being perfected by December 31, 2025.

4. Relative to other reservations the priority date of the reservation shall be ahead of any other non-municipal reservation granted with a priority date of July 1, 1985. The reservation shall have equal priority with all other reservations granted to all municipalities.

5. Any and all liability arising from the reservation or the use of the reservation is the sole responsibility of the applicant. By granting such reservations, the Board on behalf of itself and the Department of Natural Resources and Conservation assumes no liability.